

Contrary to the finding by the Special Administrative Law Judge, the parties actually stipulated to very few of the necessary elements of these claims. However, none of those issues were raised by the parties herein. The issues now before the Appeals Board are the same as those listed by the Special Administrative Law Judge in his Award. Therefore, the findings and conclusions of the Special Administrative Law Judge as to those issues not specifically raised in this appeal will be approved and adopted by the Appeals Board for purposes of this review and Order.

ISSUES

The issues raised by the respondent and insurance carrier in its Application for Review are as follows:

- (1) The compensability of the claim for the alleged personal injury by accident to the claimant's right upper extremity, as to whether such injury and resulting disability arose out of and in the course of her employment with the respondent.
- (2) The nature and extent of claimant's disability resulting from her back injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs and arguments of the parties, the Appeals Board finds and concludes as follows:

Although tried under a single docket number, this case actually involves two separate claims. The Special Administrative Law Judge found claimant to have sustained personal injury by a series of accidents culminating on February 25, 1991 resulting in a ten percent (10%) permanent partial impairment of function to her right forearm. The first issue raised by respondent pertains to this accident and Award. The second issue raised by respondent seeks review of the fifty-three percent (53%) permanent partial general body work disability awarded by the Special Administrative Law Judge for a series of accidents culminating on July 3, 1991 which involved injury to claimant's back.

- (1) The Appeals Board finds claimant has met her burden of proving that her right forearm injury arose out of and in the course of her employment with respondent.

Claimant testified that in February 1991 when she started having problems with her back and shoulder, she also experienced symptoms down her arm and both hands started hurting. These symptoms coincided with an increase in her workload and job responsibilities as a records clerk. She initially thought the symptoms were related to her back, but eventually was diagnosed with carpal tunnel syndrome. This diagnosis ultimately led to surgery on the right side only. Surgery was likewise recommended for the left but, as claimant did not consider herself as having received a good result from the surgery on the right, elected not to proceed with surgery on the left. Although claimant reported her symptoms in her upper extremities to Dr. Poole and Dr. Stein, she did not mention them to respondent prior to July 3, 1991. Thereafter, she was referred by Boeing Central Medical to Dr. Melhorn who performed the surgery.

The only medical expert to testify in this case was Dr. Robert Rawcliffe, Jr., M.D., a board-certified orthopedic surgeon. According to the history given to Dr. Rawcliffe,

claimant was referred by respondent to Dr. Melhorn who diagnosed carpal tunnel syndrome and operated on her right wrist and elbow. Claimant's symptoms worsened after surgery. The physical examination performed by Dr. Rawcliffe showed minimal evidence of carpal tunnel syndrome. He rated claimant as having a ten percent (10%) permanent impairment of function to her right upper extremity. He recommended permanent restrictions to avoid further carpal tunnel symptoms including avoiding repetitive use of her hands, certain power tools and extreme cold.

Based upon the evidence taken as a whole, the Appeals Board finds claimant has met her burden of proving that her right upper extremity injury arose out of and in the course of her employment with the respondent. Accordingly, the Award entered by the Special Administrative Law Judge, based upon a ten percent (10%) permanent partial disability to the right forearm should be affirmed.

(2) For the reasons stated below, the Appeals Board finds that the claimant is entitled to an award based upon a fifty-three percent (53%) permanent partial disability.

Respondent contends that the finding of a fifty-three percent (53%) work disability by the Special Administrative Law Judge is not supported by the evidence. In particular, respondent faults the testimony of claimant's vocational expert for failing to take into consideration claimant's preexisting condition and restrictions. Claimant argues that, if anything, the award is inadequate and should be increased to a 64.75% work disability based upon the testimony of Mr. Hardin to the effect that claimant suffered a sixty to sixty-five percent (60-65%) loss of her ability to engage in work in the open labor market and a sixty-seven percent (67%) loss of her ability to earn a comparable wage.

K.S.A. 1991 Supp. 44-510e(a) provides in part:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment."

Claimant testified that she had completely recovered from her prior back surgery in 1985 and that her present condition was solely related to her 1991 back injury. Furthermore, although she tried to limit her activities after the earlier back surgery, she had never been given any permanent restrictions by her treating physician, Dr. Poole.

Even though Dr. Rawcliffe indicated that he would have imposed similar restrictions had he treated claimant for her prior back injury, he conceded that Dr. Poole was apparently of a different opinion.

The testimony of Mr. Hardin is the only expert testimony concerning the extent to which claimant's ability to perform work in the open labor market and to earn a comparable wage had been reduced. In that respect, Mr. Hardin's testimony is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless it is shown to be untrustworthy. Otherwise, it is ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). We do not

find Mr. Hardin's testimony to be so flawed by his inclusion of the medium and heavy job categories in claimant's pre-injury labor market as to render his opinions so untrustworthy that they should be entirely disregarded. Furthermore, it is not improper for the record to include the opinions of Mr. Hardin utilizing restrictions recommended by Dr. Murphy since no timely objections to those opinions were made.

The Special Administrative Law Judge applied the formula approved by the Kansas Supreme Court in Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990), and by giving equal weight to a forty-two percent (42%) reduction in ability to perform work in the open labor market with a sixty-four percent (64%) reduction in ability to earn comparable wage, found the claimant's permanent partial general disability to be fifty-three percent (53%). While the Appeals Board may not have calculated the labor market and wage loss percentages in precisely the same way as the Special Administrative Law Judge, the Appeals Board considers his ultimate finding and conclusion with regard to the percentage of claimant's permanent partial disability to be reasonable and within the appropriate range and, therefore, adopts same as its own. The Appeals Board further approves and adopts the other findings and conclusions of the Special Administrative Law Judge as set forth in his Award of August 25, 1995 as is specifically set forth herein, to the extent they are not inconsistent with the specific findings and conclusions expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated August 25, 1995, should be, and hereby is, affirmed in all respects.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Rita Fife, and against the respondent, The Boeing Company-Wichita, and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury which occurred by a series of accidents culminating on February 25, 1991, and based upon an average weekly wage of \$794.34, for 20 weeks of permanent partial disability compensation at the rate of \$278.00 in the sum of \$5,560.00 for a 10% permanent partial impairment of function of the right forearm.

As of February 2, 1996, all compensation is past due and owing and is ordered paid in one lump sum. The Appeals Board further approves and adopts the remaining orders entered by the Special Administrative Law Judge as set forth in his August 25, 1995 Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated August 25, 1995, should be, and hereby is, affirmed in all respects.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Rita Fife, and against the respondent, The Boeing Company-Wichita, and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund for an accidental injury which occurred by a series of accidents culminating on July 3, 1991 and

based on an average weekly wage of \$798.34, for 164.86 weeks of temporary total disability compensation at the rate of \$289.00 per week in the sum of \$47,644.54 and 250.14 weeks of permanent partial disability compensation at the rate of \$282.09 per week in the sum of \$70,561.99 for a 53% work disability making a total award not to exceed \$100,000.00.

As of February 2, 1996, there is due and owing claimant \$47,644.54 in temporary total compensation and 74.57 weeks of permanent partial compensation at the rate of \$282.09 per week in the sum of \$21,035.45 making a total due and owing of \$68,679.99 less \$47,644.54 heretofore paid.

The remaining 175.57 weeks are to be paid at the rate of \$282.09 per week until fully paid or further order of the Director, the total award, however, not to exceed \$100,000.00.

The Appeals Board hereby adopts the remaining orders as set forth by the Special Administrative Law Judge in his August 25, 1995 Award.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, Kansas
Vincent L. Bogart, Wichita, Kansas
Frederick L. Haag, Wichita, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director